OFFICE OF THE COMMISSIONER/ APPELLATE AUTHORITY
DEPARTMENT OF FOOD SUPPLIES AND CONSUMERS AFFAIRS
GOVT. OF NCT OF DELHI
ROOM No. 101, 1st FLOOR, K-BLOCK, VIKAS BHAWAN, I.P. ESTATE,
NEW DELHI-110002, Ph.No. 011-23379252.

No. PS/Comm/AA/FPS Appeal/F&S/2021/ 479-482 **Dated:** 15/12/2021

Appeal No. 23/2021

In the matter of:

M/s. Shiv Store,
FPS No. 9170, Circle-02 (Burari)
Delhi.

Shri Satish Kumar ..... **Appellant**

Versus

The Assistant Commissioner (North)
Deptt. Of Food Supplies & Consumer Affairs
Delhi ..... **Respondent**

Date of Hearing: 09.12.2021

ORDER

The Order shall dispose of the appeal filed by Shri Satish Kumar, Prop. M/s. Shiv Store, FPS No. 9170, Circle -02 (Burari) under Clause 6 (6) of Delhi Specified Articles (Regulation of Distribution) Order, 1981 against Cancellation Order dated 09.02.2016 and 29.11.2016 passed by Assistant Commissioner (North).

Shri Satish Kumar, Appellant alongwith Shri Shailender, Authorised Representative were present.

Shri Kulbhushan Babbar, Assistant Commissioner (North-West) Respondent present.

The Case was called and heard at length.

The Authorised Representative of the Petitioner submitted the following:-

1. That the licence No. 9170 in respect of M/s. Shiv Store, Licensee was issued which was valid upto 04.10.2018.
2. That on 09.12.2015 a team of FSO (C-02), Burari inspected the FPS of the petitioner who was away to attend a natural call for 45 minutes and had left his friend Neeraj Tyagi to look after the FPS at that time.

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3. Shri Neeraj Tyagi requested to Inspecting Team for wait but the same was declined by the officers and they recovered the current record i.e. Sales Register, Cash Memos and Stock Register in absence of Licensee. They conducted the physical verification and prepared Entry – Cum – Search – Cum – Recovery – Cum – Counting – Cum Weighment Memo on spot but copy of the same was not provided to Shri Neeraj Tyagi and got his signatures on blank paper which was later on converted into his statement.
4. Vide Suspension Cum Show Cause Notice dated 14.12.2015 the FPS was suspended on the ground of variation to the tune of 22.18 Qtls. Wheat and 4.62 Qtls. of Rice (Excess).
5. On 06.02.2016 two show cause notices were issued in respect of the same inspection wherein one SCN depicts Excess (13.62 Qtls) other SCN depicts Short (30.26 Qtls). None of them explains as to how they have arrived at their respective conclusions.
6. That while the enquiry in suspension order dated 14.12.2015 and other show cause notices dated 06.02.2016 was pending for 15.02.2016 and 22.02.2016, the respondent vide order dated 09.02.2016 and 29.11.2016 cancelled the FPS of the Petitioner.
7. There is no allegation of receipt of any complaint by the card holders of not receiving the SFAs.
8. The Authorised Representative stated that the authorisation of FPS was issued on 05.10.2015 with the direction to issue SFAs w.e.f. 12.11.2015 and in the meantime within one month the inspection was conducted on 09.12.2015 by the respondent. Being a newone unexperienced licencee the petitioner could not submit the legitimate reply.
9. That in cancellation order dated 09.02.2016, 05 card holders in question already submitted affidavits that they have received SFAs and the FPS was cancelled on the ground that these 05 card holder were not presented before the respondent. The respondent did not considered the affidavits submitted by the card holders.
10. The Authorised Representative requested for grant of opportunity by remanding back the case to the respondent so that the appropriate reply would be filed.

The Respondent contended that:-

That the Inspecting team followed the rules & regulation in conducting the inspection of FPS. The Order dated 09.02.2016 was issued after following due process and giving sufficient opportunity to FPS holder to explain the shortcomings. He explained the reason of issuing two SCN on same day that at the time of sealing the shop the stock was excess and when the shop was de-sealed the stock was found short as the seal was not found intact. A FIR has also been registered for tempering of seal. The FPS holder has not tried to refute the charge mentioned in the SCN dated 16.01.2016 through his reply but attempted to save himself from action on the shortcoming by way of getting and submitting unreliable and untruthful affidavits with the connivance of card holders in question. Sufficient opportunities were given to the petitioner to submit his reply but he failed to submit concrete reply. The irregularity committed by the FPS holder is very serious and don't call for any leniency towards him.

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After hearing contentions of both the parties, examining their written/verbal submissions and perusing other relevant records placed before me, it is evident and admitted by the petitioner that the Licensing Authority afford ample opportunities to submit the clarification but the Appellant failed to submit concrete reply and thus acted in an irresponsible manner by violating the terms and conditions of the license. At the time of de-sealing of shop the seal was not found intact for which FIR has already been registered which is also a grave violation of the terms and conditions of the authorisation. The plea of operating the FPS as new allottee is not acceptable as the Licensee is bound to comply the terms and conditions of the License and the Fair Price Shop holder is responsible for carrying out retail sale of Specified Food Articles in accordance with the directions and instructions issued from time to time regarding purchase, sale and storage of Specified Food Articles. Therefore, I do not see any reason to modify or set aside the order passed by the Licensing Authority.

In view of above, I am of the considered view that the appeal filed by the petitioner has no merit hence the Cancellation Order dated 09.02.2016 & 29.11.2016 passed by the Assistant Commissioner (North) is hereby upheld and the appeal is dismissed.

The appeal stands disposed of.

Ordered accordingly. Parties be informed.

(NEERAJ SEMWAL)
COMMISSIONER (F&S)/APPELLATE AUTHORITY

No. PS/Comm/AA/FPS Appeal/F&S/2021/ 479-489 **Dated:** 15/12/2021

Copy to:

1. The Asstt. Commissioner (North), F&S Deptt. GNCT of Delhi.
2. M/s. Shiv Store, FPS No. 9170, Circle-02 (Burari), Delhi through Assistant Commissioner (North).
3. SSA (IT), F&S Deptt., K-Block, Vikas Bhawan, Delhi with the direction to upload the order on Departmental website.
4. Shri Satish Kumar, M/s. Satish Store, Khasra No. 5/8, 9, 10, 41 Feet Road, Tomar Colony, Kamalpur, Burari, Delhi, Mob 9212463159.

(NEERAJ SEMWAL)
COMMISSIONER (F&S)/APPELLATE AUTHORITY